

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOHNNY JENKINS**

Claimant

VS.

**DILLON COMPANIES INC.**

Respondent

Self-Insured

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Docket No. 1,006,248

**ORDER**

Respondent appeals the December 16, 2004 Award of Administrative Law Judge Bruce E. Moore. The Appeals Board (Board) heard oral argument on April 22, 2005, in Wichita, Kansas.

**APPEARANCES**

Claimant appeared by his attorney, Mitchell W. Rice of Hutchinson, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Scott J. Mann of Hutchinson, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge. The parties stipulated to the ALJ that claimant had a 10 percent whole body functional impairment as a result of the injuries occurring on April 3, 2002. At oral argument before the Board, the parties provided additional stipulations, agreeing that the 26 percent task loss and 59 percent wage loss determined by the ALJ in the Award were appropriate and were no longer in dispute. The Board, therefore, affirms the determination that claimant has suffered a 42.5 percent permanent partial general work disability as a result of the injuries of April 3, 2002, with the understanding that claimant's entitlement to this work disability award remains in dispute.

**ISSUES**

Does claimant's termination by respondent justify a denial of work disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed and claimant should be awarded a 42.5 percent permanent partial general disability based upon a work disability for the injuries suffered on April 3, 2002.

The Award of the ALJ sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

The dispute in this matter deals with the events leading up to claimant's termination and claimant's good faith pursuit of a job after his injury. Claimant was terminated by respondent on September 5, 2002, for attendance problems.

The ALJ found that claimant was terminated more as a result of confusion as to when he was scheduled to work rather than due to any lack of good faith on claimant's part. The Board concurs with that finding. The confusion regarding whether claimant was to work Thursday night, Friday night or Saturday night was not only evident in the record, but it was also painfully evident with the attorneys arguing in person before the Board. The fact that the attorneys were unable to accurately articulate when claimant was scheduled to work supports a finding of confusion on claimant's part. The Board cannot find that claimant was acting in bad faith in failing to appear for work on Friday, August 30, 2002, rather than Saturday, August 31, 2002, or that he failed to make a good faith effort to obtain appropriate employment, post-injury.

The Board finds, pursuant to K.S.A. 44-510e, that claimant is entitled to a permanent partial general disability based upon the task loss and wage loss above stipulated by the parties. Accordingly, the Board affirms the ALJ's determination that claimant has a 42.5 percent permanent partial general body disability for the injuries suffered on April 3, 2002. The Board, therefore, affirms the Award of the ALJ.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated December 16, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Mitchell W. Rice, Attorney for Claimant  
Scott J. Mann, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director